

## **TITLE 14. Fish and Game Commission**

### **Notice of Proposed Changes in Regulations**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 210, 215, 220, 7071, and 8587.1 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, 206, 210, 215, 220, 5517, 8585.5, 8586 and 8587.1 of said Code, proposes to amend sections 27.60, 27.82, 27.83, 28.26, 28.27, 28.28, 28.29, 28.54, 28.55, and 28.58, Title 14, California Code of Regulations, relating to changes to the 2004 recreational groundfish fishery regulations for consistency with federal rules.

#### **Informative Digest/Policy Statement Overview**

The California Fish and Game Commission (Commission) proposes to adopt sport fishing regulations for groundfish and associated species of finfish that conform to those of the Pacific Fishery Management Council (Council), and that regulate associated state-managed species in a manner that provides for continued recreational fishing opportunities consistent with efforts to conserve species and restore overfished stocks of groundfish. The Council met September 8-12, 2003 to approve final regulatory recommendations affecting recreational and commercial fishing for groundfish and associated species during 2004.

Under existing law, west coast groundfish, including rockfish and lingcod, are managed by the Council pursuant to the Pacific Coast Groundfish Fishery Management Plan (Groundfish Plan) to comply with policies and standards of the Federal Sustainable Fisheries Act, Public Law 94-265. Current federal law requires that rebuilding plans be adopted for those groundfish stocks that are determined by the Council to be overfished. Specified stocks of shelf and slope rockfish (bocaccio, cowcod, canary, and yelloweye rockfishes) and lingcod, that are generally found deeper than 20 fathoms (120 feet), are currently assessed as overfished, with rebuilding expected to take several decades in the case of some species of rockfish. Other species of finfish that occur in association with rockfishes, and for which changes in regulations are being considered for the 2004 calendar year, include California scorpionfish, ocean whitefish, cabezon, greenlings, and California sheephead. A recently completed assessment of bocaccio off California indicates improvement in the stock compared with last year providing for consideration of some relaxation of recreational and commercial fishing regulations for 2004.

Existing sportfishing regulations for groundfish and associated species (including rockfish, lingcod, cabezon, California scorpionfish, California sheephead, greenlings, and ocean whitefish) include size and bag limits, and designate when and where (season and depths) they may be taken and possessed. Existing regulations establish boundaries and provisions for fishing in the Northern, Central and Southern Rockfish and Lingcod Management Areas (RLMAs), Cowcod Conservation Areas, and the California Rockfish Conservation Area. Regulations currently authorize the Department of Fish and Game (Department) to close sport fishing for lingcod, rockfish, a subgroup of rockfish, and/or California scorpionfish if the Department determines that annual harvest limits adopted as regulation by the National Marine Fisheries Service for lingcod, rockfish, a subgroup of rockfish, and/or California scorpionfish are exceeded, or are projected to be exceeded.

The proposed changes would, in most cases, lessen fishing restrictions on the recreational take and possession of groundfish and associated state-managed species in response to recent assessments of the status of some groundfish species. Regulation changes being considered by the Commission include adjustments to authorized fishing seasons and depths for rockfish, lingcod and associated species within the Central and Southern RLMAs. Also being considered are changes in bag limits for bocaccio, canary and yelloweye rockfishes, and exceptions to season and area closures. In addition, sections dealing with bag limits and with season and area closures in management and conservation areas have been reorganized in an effort to make them easier for the public to understand.

More specifically, the proposed changes to recreational fishing regulations in waters off California include the following:

- Set the daily bag limit for canary and yelloweye rockfishes in the area from 42°00' North latitude (California-Oregon border) south to 40°10' North latitude (near Cape Mendocino) at zero. *[Conformance with federal regulations; amendment adopted by the Council on September 12, 2003.]*
- Allow one bocaccio to be retained in the rockfish bag limit in the area from 40°10' North latitude (near Cape Mendocino) to the U.S.-Mexico border (current limit is zero). *[Conformance with federal regulations; amendment adopted by the Council on September 12, 2003.]*
- In the Central RLMA, provide for a 10-month season (January, February, and May through December) for rockfishes (except canary, cowcod, and yelloweye), cabezon, greenlings (of the genus *Hexagrammos*), lingcod and California scorpionfish with the following depth constraints and area closures:
  - Allow fishing only in waters less than 30 fathoms (180 feet) during January, February, and September through December;
  - Allow fishing only in waters less than 20 fathoms (120 feet) during May through August;
  - Prohibit fishing in waters less than 10 fathoms (60 feet) around the Farallon Islands and Noonday Rock; and
  - Prohibit fishing in all waters of Cordell Bank.*[Conformance with federal regulations; amendment adopted by the Council on September 12, 2003.]*
- In the Southern RLMA, provide for a 10-month season (March through December) for rockfishes (except canary, cowcod, and yelloweye), cabezon, greenlings (of the genus *Hexagrammos*), and lingcod; and provide for a 4-month season (March, April, November and December) for California scorpionfish. During the open periods, allow fishing only in waters less than 60 fathoms (360 feet), except in the Cowcod Conservation Areas, where fishing would continue to only be allowed in waters less than 20 fathoms (120 feet). *[Conformance with federal regulations; adopted by the Council on September 12, 2003.]*
- In the Southern RLMA, remove the provision allowing fishing for California scorpionfish at Huntington Flats in waters less than 50 fathoms. *[Conformance with federal regulations; adopted by the Council on September 12, 2003.]*
- Describe the 10-, 20-, and 30-fathom depth constraints in the Central RLMA by general depth contour lines, and describe the 60-fathom depth constraint in the Southern RLMA by lines connecting waypoints adopted in federal regulations (50 CFR Part 660).
- For ocean whitefish (a state-managed species), the following options are proposed in the Central RLMA and Southern RLMA:
  - Option 1 (preferred option) - Align the ocean whitefish seasons and fishing depths with rockfish and lingcod seasons and fishing depths. *[Help achieve groundfish management goals.]*
  - Option 2 - Provide for a year-round fishery, and allow fishing only in waters less than 20 fathoms (120 feet). *[Exemptions to proposed or existing depth or season constraints.]*
  - Option 3 - Provide for a year-round fishery, and allow fishing only in waters less than 60 fathoms (360 feet). *[Exemptions to proposed or existing depth or season constraints.]*
  - Option 4 - Provide for a year-round fishery with no depth constraints. *[Exemptions to proposed or existing depth or season constraints.]*
- For California sheephead (a state-managed species), the following options are proposed in the Central RLMA and Southern RLMA:
  - Option 1 (*status quo*; no change to current regulations) - Provide for a year-round fishery with no depth constraints. *[Exemptions to proposed or existing depth or season constraints.]*
  - Option 2 (preferred option) - Align the California sheephead seasons and fishing depths with rockfish and lingcod seasons and fishing depths. *[Help achieve groundfish management goals.]*
  - Option 3 - Provide for a year-round fishery, and allow fishing only in waters less than 20 fathoms (120 feet). *[Exemptions to proposed or existing depth or season constraints.]*
  - Option 4 - Provide for a year-round fishery, and allow fishing only in waters less than 60 fathoms (360 feet). *[Exemptions to proposed or existing depth or season constraints.]*

- Exempt shore-based recreational divers and anglers from seasonal closure periods for rockfish, lingcod and associated species including cabezon, greenlings of the genus *Hexagrammos*, California scorpionfish, California sheephead, and ocean whitefish. The following options are proposed to clarify the activities that would be authorized under the exemption for shore-based divers and anglers:
  - Option 1 – Does not allow the use of any watercraft.
  - Option 2 – Authorizes the use of only non-motorized watercraft deployed from shore for spearfishing, and prohibits all types of fishing gear except spearfishing gear aboard the watercraft. *[Exemptions to proposed or existing depth or season constraints.]*
- Add cabezon to the list of recreational fisheries that may be closed by the Department in-season when the Department determines that the federal annual harvest limit has been exceeded or is projected to be exceeded.
- Modify the structure and/or organization of sections 27.60, 27.82, and 27.83 to improve clarity and increase public understanding of these regulations, and make some technical changes to the sections 27.82 and 27.83 to clarify the intent of these regulations.
  - Section 27.60
  - In the subsection on special limits (subsection (b)(3)), the listings of bag limits for each species or group were put in tabular form for easy reading.
  - Section 27.82
  - Reorganize the structure the section to simplify and clarify the regulations. The general RLMA boundaries are in subsection (a), the seasons and depth constraints are in subsection (b), the exceptions to these provisions are in subsection (c), the definitions of areas and special rules relating to the protection of cowcod are in subsection (d), and a description of the closure process is in subsections (e) and (f).
  - Add the following *status-quo* exemption for clarity: vessels that have rockfish, lingcod, or associated species aboard may transit in waters deeper than those where fishing is authorized provided that no fishing gear is deployed.
  - Remove the separate provision for the Northern RLMA that specifies when the federal harvest guideline for canary rockfish or yelloweye rockfish is reached or projected to be exceeded, the retention of canary and yelloweye will be prohibited and waters 27 fathoms or greater may be closed to fishing for rockfish and lingcod. It is no longer needed, because the proposed regulations prohibit the retention of canary and yelloweye rockfishes in the Northern RLMA, and existing regulations provide for closing all or part of each RLMA if a harvest guideline has been exceeded or is projected to be exceeded.
  - Clarify that an annual harvest limit can be an optimum yield (OY) or a harvest guideline.
  - Section 27.83
  - Add language stating that the Section serves to regulate the use of recreational fishing gear in areas which, during specified months and in specified water depths, are closed to fishing for rockfish and associated species.
  - Remove the definitions of the management areas and refer to the definitions in Section 27.82.
  - Modify the regulation to clarify that vessels may transit the California Rockfish Conservation Area and Cowcod Conservation Areas with prohibited gear provided that no gear is in the water.
  - Remove the reference to an outer boundary to simplify and standardize the recreational gear restrictions in all waters, times and areas not open to fishing for rockfish and lingcod.
- minor editorial changes are also proposed in sections 28.27, 28.28, 28.29, 28.54, and 28.58 to improve the clarity and consistency of the regulations.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Hubbs-Sea World Research Institute, 2595 Ingraham Street, San Diego, California on Friday, November 7, 2003, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before October 31, 2003 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be received no later than November 7, 2003 at the hearing in San Diego, CA. E-mail comments must include the true name and mailing address of the commentor.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to Robert R. Treanor or Sherrie at the preceding address or phone number. Ms. Marija Vojkovich, Offshore Ecosystem Coordinator, Department of Fish and Game, phone (805) 568-1246, has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at [http://www.dfg.ca.gov/fg\\_comm/](http://www.dfg.ca.gov/fg_comm/).

#### **Availability of Modified Text**

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

#### **Impact of Regulatory Action**

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed increase in the fishing season (open periods) for rockfish and lingcod off California south of 40°10' North latitude (near Cape Mendocino) from six month in 2003 to ten months in 2004 is expected to have a positive economic benefit for recreational CPFV businesses, sportfishing shops, and gear and tackle manufacturers. The proposed four-month increase in the fishing season represents a 66 percent increase in fishing time provided in 2003.

Information from the National Marine Fisheries Service (NMFS) estimates anglers aboard CPFVs take roughly 43 percent of all ocean rockfishes caught by all recreational fishermen in northern California and 67 percent in southern California. Of all CPFV trips taken in 2002, 5.9 percent occurred in northern California in waters greater than 20 fathoms and specifically targeted rockfish and lingcod, and 0.8 percent occurred in southern California in waters greater than 20 fathoms and specifically targeted rockfish and lingcod. Based on a NMFS survey of year 2000 angler expenditures (NMFS 2001), total party boat charter fees paid annually by passengers amounted to about \$13 million and \$51 million for northern and southern California, respectively. This includes both resident and non-resident CPFV passenger expenditures.

We would expect some positive economic benefit to recreational CPFV businesses by increasing the water depths that can be fished. For example, if fishing trips increase by only 10 percent overall, as a result of extending the depth beyond 20 fathoms, we might realize an increase in CPFV revenues of \$76,700 in northern California, and \$40,800 in southern California. This is based on the percentage of CPFV passenger fee expenditures for trips at depths greater than 20 fathoms and specifically targeting rockfish and lingcod, amounting to \$767,000 (\$13 million x 5.9 percent) for northern California and \$408,000 (\$51 million x 0.8 percent) for southern California using NMFS's year 2000 expenditure data. We would also expect a positive, but unquantifiable, economic benefit for sportfishing shops and gear and tackle manufacturers due to the increase in the water depths that can be fished.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

Some increase in jobs could result if CPFVs are better able to operate profitably due to the reduced closure periods and increased areas available for fishing in 2004 [See comments under (a) above].

- (c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal funding to the State: None.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None.

- (f) Programs Mandated on Local Agencies or School Districts: None.

- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.

- (h) Effect on Housing Costs: None.

#### Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

#### Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: October 7, 2003

Robert R. Treanor  
Executive Director